

## IN THE UNITED STATES PATENT &amp; TRADEMARK OFFICE

In re Application of

Bernd Zschke et al.

Serial Number 10,507,315

Filed: 09/10/2004

For: GRAFT POLYOLS WITH A BIMODAL PARTICLE SIZE DISTRIBUTION AND  
METHOD FOR PRODUCING GRAFT POLYOLS OF THIS TYPE, IN ADDITION TO  
THE USE THEREOF FOR PRODUCING POLYURETHANES

## DECLARATION UNDER 37 CFR 1.132

I, Daniel Freidank, a citizen of the Federal Republic of Germany and residing at  
67063 Ludwigshafen, Federal Republic of Germany, declare as follows:

I am a fully trained chemist, having studied chemistry at the University of Bielefeld, 33501  
Bielefeld, Federal Republic of Germany, from 1993 to 1999 and at the University of Freiburg,  
79110 Freiburg i. Br., Federal Republic of Germany, from 2000 to 2003.

I received my Doctors degree at the University of Freiburg in 2005,

I joined BASF AG, 67056 Ludwigshafen, Federal Republic of Germany, in 2003, since when  
I have been working in the field of polyurethane research and development,

I am well acquainted with technical English,

To demonstrate the meaning of the phrase "that the peaks of the large and small particles measured by the Fraunhofer diffraction method in combination with polarization intensity differential scattering do not overlap" I declare the follow.

I refer to the comparative examples of my Declaration under 37 CFR 1.132 of July 19, 2007.

It had been shown in the Declaration of July 19, 2007 that the diagrams resulting from the results of the measurements of the particle size distribution show two peaks which are separated from each other so that there was no overlap of the peaks.

As every measurement method the polarization intensity differential scattering has a so called background noise of the measurement.

The background-noise of the measurement is in the order of magnitude of typically 1% of the peak maximum. Therefore data-points, the value of which is less than this, are not a signal, but part of the indefinite background. Therefore they cannot be distinguished from "nothing", and it can be stated, that the peaks do not overlap.

In the current patent application it means that data measured between the peaks are below the background-noise, or, with other words, between the peaks is an area of measurements not larger as the background-noise.

The polarization intensity differential scattering is an established method for determining the particle size in the range of the graft polyols claimed in the patent application Serial Number 10,507,315.

The Laser Diffraction Particle Size Analyzer LS 230 used for the Comparative Examples in my Declaration of July 19, 2007 is common used for these measurements.

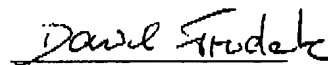
So art the meaning of the phrase "that the peaks of the large and small particles measured by the Fraunhofer diffraction method in combination with polarization intensity differential scattering do not overlap" is clear for the person skilled in the art.

It can be stated, that all comparative examples are in accordance with the claims WO 03/078496. The peaks are well separated and do not overlap.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information or belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signed at 67056 Ludwigshafen, Germany, this

day of

  
Signature of Declarant